

UNITED STATES DISTRICT COURT**District of New Mexico**UNITED STATES OF AMERICA
V.**Franklin Bluelake****Judgment in a Criminal Case**

(For Offenses Committed On or After November 1, 1987)

Case Number: 1:10CR00612-001JBUSM Number: **54157-051**Defense Attorney: **Brian Pori, Appointed**

THE DEFENDANT:

- ☒ pleaded guilty to count(s) **1 of Indictment**
- ☐ pleaded nolo contendere to count(s)
- ☐ after a plea of not guilty was found guilty on count(s)

The defendant is adjudicated guilty of these offenses:

<i>Title and Section Nature of Offense</i>	<i>Offense Ended</i>	<i>Count Number(s)</i>
18 U.S.C. Sec. 113(a)(6) Assault Resulting in Serious Bodily Injury, Crime in Indian Country, 09/28/2009		1
18 U.S.C. Sec. 1153		

The defendant is sentenced as specified in pages 2 through **6** of this judgment. The sentence is imposed under the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count .
- ☒ Count **s 2 and 3** are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

County of Residence**October 27, 2010**_____
Date of Imposition of Judgment**/s/ James O. Browning**_____
Signature of Judge**Honorable James O. Browning**
United States District Judge_____
Name and Title of Judge**November 8, 2010**_____
Date Signed

Defendant: **Franklin Bluelake**
Case Number: **1:10CR00612-001JB**

IMPRISONMENT

The defendant is committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **120 months**.

Franklin Bluelake's offense level is 20, and his criminal history category is V, establishing a Guideline sentencing range of 63-78 months. The plea agreement, however, stipulates to a sentence of 120 months. The Court has carefully considered the Guidelines and other sentencing goals. Specifically, the Court has considered the Guideline sentencing range established for the applicable category of offense committed by the applicable category of defendant. After carefully reviewing the Presentence Report -- particularly Bluelake's criminal history and the circumstances of the incident -- the Court concludes that the punishment set forth in the Guidelines is not appropriate for this offense. The Court has considered the kinds of sentences and ranges that the Guidelines establish, and the Court agrees with the parties that a sentence of 120 months reflects the seriousness of the offense and Bluelake's criminal history. The Court believes that a sentence of 120 months also promotes respect for the law. The Court has great respect for both counsels' judgment as to the problems of going to trial on counts 2 and 3 of the Indictment. Taking that into consideration the circumstances of the incident and Bluelake's criminal history, the Court can confidently say that it believes that a sentence of 120 months provides a just punishment given all the circumstances. The Court believes it must heavily weigh whether the sentence affords adequate deterrence within the 18 U.S.C. § 3553(a) calculus. Because of the long pattern of violence against Ms. Chee and because of Bluelake's criminal history, the Court believes that a sentence greater than the advisory Guidelines sentence is necessary to protect the public, specifically Ms. Chee, and to afford adequate deterrence, not only generally but also specifically. The Court believes that a sentence of 120 months fully and effectively reflects each of the factors embodied in 18 U.S.C. § 3553(a). And while the Court's task as a trial court is not to come up with a reasonable sentence, but to balance the 18 U.S.C. § 3553(a) factors correctly, see *United States v. Conlan*, 500 F.3d 1167, 1169 (10th Cir. 2007)("[A] district court's job is not to impose a reasonable sentence. Rather, a district court's mandate is to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of section 3553(a)(2)."(citation omitted), the Court believes a sentence of 120 months is reasonable. Under rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Court therefore accepts the plea agreement, which includes a stipulated sentence of 120 months. The Court declines to impose a sentence within the sentencing range set forth by the Guidelines. The Court varies upward because it believes that the sentence that the parties agreed to, and with which the Court agrees in light of the sentencing goals, more effectively promotes the goals outlined in 18 U.S.C. § 3553(a).

☒ The court makes these recommendations to the Bureau of Prisons:

Phoenix Federal Correctional Institution, Phoenix, Arizona, if eligible

The Court recommends the defendant participate in the Bureau of Prisons 500 hour drug and alcohol treatment program.

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant must surrender to the United States Marshal for this district:
- ☐ at on
 - ☐ as notified by the United States Marshal.
- ☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
 - ☐ as notified by the United States Marshal
 - ☐ as notified by the Probation or Pretrial Service Office.

RETURN

I have executed this judgment by:

Defendant delivered on _____ to
_____ at _____ with a Certified copy of this judgment.

UNITED STATES MARSHAL

Deputy United States Marshal

Defendant: **Franklin Bluelake**
Case Number: **1:10CR00612-001JB**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. The defendant shall not commit another federal, state, or local crime. The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any dangerous weapon. (Check, if applicable).
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable).
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall obtain and maintain full time, legitimate employment, or attend a vocational or academic training program throughout the term of supervised release as directed by the probation officer;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not possess, have under his control, or have access to any firearm, ammunition, explosive device, or other dangerous weapons, as defined by federal, state, or local law.

The defendant must participate in and successfully complete a substance abuse treatment program which may include drug testing, outpatient counseling, or residential placement. The defendant is prohibited from obstructing or attempting to obstruct or tamper, in any fashion, with the collection, efficiency and accuracy of any substance testing device or procedure. The defendant may be required to pay a portion of the cost of treatment and/or drug testing as determined by the Probation Office.

The defendant must submit to a search of his person, property, or automobile under his control to be conducted in a reasonable manner and at a reasonable time, for the purpose of detecting alcohol and weapons at the direction of the probation officer. He must inform any residents that the premises may be subject to a search.

The defendant must refrain from the use and possession of alcohol and other forms of intoxicants. He must not frequent places where alcohol is the primary item for sale.

The defendant must participate in and successfully complete a mental health treatment program, which may include outpatient counseling, residential placement, or prescribed medication as approved by the probation officer. The defendant may be required to pay a portion of the cost of this treatment as determined by the Probation Office.

The defendant will have no contact with the victim at anytime.

The Defendant shall immediately undergo a psychological evaluation, which may include a sexual evaluation, and begin participating in treatment, consistent with the recommendation of the psychological evaluation, including sex offender treatment if the evaluation and probation officer determine that is appropriate. Furthermore, the Defendant shall submit to clinical polygraph testing and any other testing, including sex offender testing, as directed by the probation officer.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	Assessment	Fine	Restitution
	\$100.00	\$0.00	\$234.79

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

A ☒ In full immediately; or

B ☐ \$ immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

Pursuant to the Mandatory Victim Restitution Act, it is further ordered that the Defendant will make restitution to the victim in this case, Laura Chee, in the amount of \$234.79. The restitution will be paid monthly of no less than \$30 per month.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.